Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications	)	
Act of 1996	)	

AT&T Comments on WorldCom Petition for Waiver

Pursuant to the Commission's Public Notice (DA-00-2131, released September 18, 2000), AT&T Corp. ("AT&T") submits the following comments in support of WorldCom's Petition for Waiver ("Petition") of the use restriction provisions in the Commission's Supplemental Order Clarification ("Clarification Order").[1]

Introduction and Summary

In its Supplemental Order in this proceeding,[2] the Commission established use restrictions that, pending a further investigation regarding the potential impacts on incumbent LECs' ("ILECs'") special access revenues, prohibited competitive LECs ("CLECs") from converting circuits ordered under ILEC special access tariffs to unbundled network elements ("UNEs") unless the CLECs use such circuits to provide "a significant amount of local exchange service." The Supplemental Order (¶ 2) also stated that the Commission would resolve the general use restriction issue no later than June 30, 2000.

[1] FCC 00-183, rel. June 2, 2000.

[2] FCC 99-370, rel. Nov. 24, 1999.

In the Clarification Order, released on June 2, 2000, the Commission clarified the term "significant amount of local exchange service" by establishing three nominal "safe harbor" options a CLEC could use to demonstrate that it meets the "significant amount of local service" requirement. Further, the Commission acknowledged that there may be circumstances in which a CLEC is providing a significant amount of local exchange service over circuits ordered under special access tariffs but does not qualify under the options described in the order. In such cases, the Commission stated that CLECs "may always petition the Commission for a waiver of the safe harbor requirements under our existing rules" (Clarification Order ¶ 23).[3]

Critically, the Clarification Order (¶ 17) also converted the use restrictions from a short-term measure intended to allow the Commission promptly to consider their lawfulness into a prohibition that continues indefinitely the ILECs' special access revenue streams at the expense of higher costs for CLECs. Given the substantial extension of those use restrictions and the significantly unequal economic burdens they impose on CLECs and their customers, WorldCom has made a reasonable proposal that avoids penalizing WorldCom and similarly situated CLECs when (1) they are in fact using circuits ordered under special access tariffs to provide local service and (2) it is extremely difficult or impossible to meet the proof requirements of the Commission's safe harbor options. Given that WorldCom and other CLECs can reasonably demonstrate that they comply with the technical and record keeping capabilities described in the

---

[3] Given that the Clarification Order recognizes that the safe harbor options do not provide a complete description of all cases that could comply with the "significant amount of local service" requirement, the instant petition could also be styled as a declaratory ruling that the circumstances described qualify under the general rule. AT&T believes that WorldCom's Petition meets the necessary legal standards in either case.

Petition, AT&T supports WorldCom's proposal. Indeed, WorldCom's request is not only reasonable but it is also necessary to balance CLECs' legal right to obtain access to UNEs to provide local service with other issues, which is the Commission's stated objective.[4]

The Petition (at 1) makes clear that the proposal does not challenge the Commission's "significant amount of local service" requirement. Indeed, the proposal would only permit a CLEC to convert a circuit that was purchased under a special access tariff to UNE(s) if the traffic over that facility is exclusively local service and associated switched access.[5] Thus, if a facility purchased under a special access tariff contains channels that are used to carry any special access traffic, that facility (and its associated EEL, if applicable) would not be covered (id.). Accordingly, WorldCom (id. at 2) states that the proposal would only enable it to convert a limited number of (about 20,000) special access circuits to UNEs. Applying the same requirements to AT&T would only result in the conversion of a similar number of special access circuits. This is a tiny

---

[4] The Clarification Order expresses concern that allowing CLECs to use combinations of UNEs in lieu of special access services might allow CLECs that are also IXCs to use those UNEs "solely to bypass tariffed special access service," which, in turn, might threaten support for universal service (id., ¶¶ 21, 7; see also id., 22(3), 28). AT&T, WorldCom and other CLECs have previously demonstrated that this concern is unfounded. Nevertheless, WorldCom's proposal would merely permit a CLEC to obtain as UNEs facilities that are not used to provide any special access at all and thus could not have any significant impacts on universal service.

[5] WorldCom (at 2) correctly recognizes that the provision of local exchange service requires a CLEC to provide associated access services that enable an end user to originate and receive long distance calls over that line. However. as long as the access services provided over a line are comprised solely of switched (rather than special) access, there is no possibility that a CLEC would be using UNEs "simply to bypass special access" (Clarification Order ¶ 22(3)).

fraction of the many millions of special access circuits deployed nationally and would not have any appreciable impact on ILECs' special access revenues.[6]

Conceding that its request would only apply when the existing special access circuits are used to carry exclusively local service, WorldCom focuses on other aspects of the Commission's safe harbors that are not necessary to assure that the Commission's objectives are met, including the prohibition against commingling UNEs and access services and the collocation requirement. For administrative purposes, WorldCom also asks the Commission to adopt a rebuttable presumption (but not a mandatory rule) that circuits connected to a Class 5 switch that is not an IXC POP are used exclusively for local traffic. All of WorldCom's requests are reasonable and are necessary so that CLECs who use circuits for exclusively local purposes will finally be able to be on a more competitive economic footing with the ILECs than before. Moreover, the request also fully complies with the Commission's desire to avoid "bypass" of ILEC special access.

As noted above, the small number of facilities covered by the proposal alone demonstrates that it would not have a material impact on ILECs' special access revenues. And critically, the facilities WorldCom describes, i.e., facilities that must terminate on a CLEC's Class 5 switch, are not even the type of facilities the ILECs discussed in their "Special Access Fact Report," which described the ILECs' concerns regarding "special access bypass." The ILECs themselves defined "special access" on the first page of their report as "dedicated facilities [that] typically 'run directly between the end user and the

[6] The ILECs acknowledge that their 1999 revenues for special access were approximately $6 billion. "Special Access Fact Report," submitted by the United States Telecom Association, prepared for Bell Atlantic, BellSouth, GTE, SBC, and U S WEST, dated January 19, 2000 at 12.

[interexchange carrier's] point of presence (POP),' or directly between two end user locations."[7] The "Class 5 switches" referenced by WorldCom act as a local switch and do not serve as an IXC POP.[8] Thus, the circuits that would be covered by the proposal are not even among those about which the ILECs raised concerns. The proposal further protects ILECs from significant economic impact by expressly providing that an eligible CLEC "must continue to pay the full access service price for the remaining access multiplexing and/or access transport services over which the UNE traffic travels" (Petition at 3). Accordingly, WorldCom's proposal is fully consistent with the Commission's Clarification Order and should be adopted.

Argument

I. The Existing Safe Harbor Options Are Practicably Unavailable

WorldCom (at 11) notes that one of the main reasons underlying its request is that the three safe harbor options described in the Clarification Order -- which were designed by ILECs and a nonrepresentative group of CLECs, none of whom have a significant long distance network -- are not readily implemented by a carrier that operates both a local and long distance network. AT&T strongly agrees with WorldCom's statement (id.) that "in many situations it is difficult if not impossible for [a carrier] to know if a particular customer satisfies the complex usage requirements set out in the [safe harbors]." In addition, as discussed below, the first safe harbor option is also practicably

---

[7] Id. at 1 (quoting the Commission's Fifth Report and Order in CC Docket No. 96-262, rel, Aug. 27, 1999 (the Commission's Access Pricing Flexibility Order); emphasis added).

[8] The AT&T switches serving the special access/local circuits described above also do not act as an IXC POP.

unavailable to any CLEC, because large business customers simply do not fit the profile it requires.

The first safe harbor option (Clarification Order ¶ 22(1)) requires a CLEC to certify that it is the "exclusive" provider of local exchange service to a customer. This is a highly unlikely scenario in today's telecommunications marketplace, for at least two reasons. First, to the extent that a large business customer[9] is prepared to deliver some of its local business to a new competitor, it is unlikely to transfer all of its local services away from the ILEC, especially in the near term. Second, large customers typically prefer to have multiple suppliers because they demand redundancy and are unlikely to settle all their business on one CLEC, particularly in this early phase of local competition (assuming, of course, that they have decided to use any supplier other than the ILEC). Thus, the first option is generally unavailable, even to a large CLEC such as AT&T or WorldCom.

Furthermore, the information necessary to make that certification is not directly available to the CLEC, and the temporal requirements of this option are also at best unclear. A CLEC is not privy to information about whether, or the extent to which, a customer uses other service providers. Thus the best (and probably only) reliable source of the data on whether the CLEC is the "exclusive" local service provider is the customer itself.[10] But even if a CLEC could obtain a representation from the customer that it is the

[9] WorldCom's proposal focuses on DS-1 and larger circuits ordered under ILEC special access arrangements. Circuits of this type that are used to provide local service are used exclusively to serve large business customers.

[10] Even the ILEC is likely to have better information on this issue than the CLEC, because the ILEC is the carrier most likely to be providing additional local service to the customer.

customer's only supplier of local services, there is no reasonable way for a CLEC to determine whether it continues to be the customer's sole supplier over time, other than by continually asking the customer, which is at best difficult and awkward from a marketing perspective, and at worst anticompetitive.[11]

The second and third safe harbor options require such complex information and record keeping that they are also effectively unavailable to CLECs. In this regard, WorldCom notes (at 11) that many customers served by "special access/local" circuits are large and use a wide variety of services, making it extremely difficult to develop monitoring criteria that would be necessary to support compliance with the requirements of the these options. AT&T's experience validates that concern.

The second option requires a CLEC to certify (i) that it handles at least one-third of the end user's local traffic measured as a percent of total end user customer local dialtone lines, and (ii) for DS-1 and larger circuits, that it handles specific percentages of local usage on individual activated channels and for the loop facility as a whole. The difficulties associated with gathering information on the former requirement are similar to those described for the first option, only worse. Now, instead of obtaining a response to the simple question of whether the customer has any other local service suppliers, the customer is required to provide (and maintain over time as changes occur) records on its total number of dialtone lines and the proportion of local service provided by a specific

[11] There are two aspects to the anticompetitiveness inherent in this option. First, it drives customers away from sampling other competitive suppliers, which is directly contrary to the purposes of the Telecommunications Act. Second, CLECs will rely on the availability of UNEs to establish their prices to the end user. If the foundation of a CLEC's pricing can be undone by the ILEC selling a single local line to the customer, CLECs will be discouraged from competing in the first place.

CLEC.[12] This is significantly discriminatory, because it imposes unique administrative burdens on CLECs and their local customers that ILECs and their local customers will never experience. Moreover, this discrimination is exacerbated in areas where the ILEC is authorized to provide long distance services. In such cases, the ILEC can continue to use the same facilities to provide both local and long distance services on an internal cost (rather than service priced) basis, without regard to the terms of the safe harbor conditions.

In contrast, the usage certification for DS-1 and larger circuits must be based on information that CLECs would have to collect. Specifically, this option requires a CLEC to demonstrate that at least 50% of the activated channels on the loop portion of a loop-transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic. Moreover, when a loop-transport combination includes multiplexing, each of the individual DS-1 circuits must meet these criteria (Clarification Order ¶ 22(2)).

Requiring CLECs to collect such data before qualifying for this option creates a huge burden. As WorldCom states:

> "it frequently is not possible for [WorldCom] to either easily identify or predict individual customers' usage patterns in a way that would enable it to make use of the [safe harbor] options. More particularly, it is impossible to predict how many switched access long distance calls a particular customer may make or receive in the aggregate on all of the local channels provided by WorldCom" (Petition at 14).

[12] Because data about the services other LECs provide is proprietary to the end user (and the other carriers), the customer is the only possible source of both the initial and updated information on this issue, which is much more complex than simply reporting whether a specific CLEC is its only supplier.

AT&T faces the same problems. AT&T does not routinely perform the data collection and analysis required by these options. Moreover, AT&T has no mechanized capability at all to track local usage on individual channels of larger circuits. Thus, at a minimum -- and to the extent it is even possible -- AT&T and WorldCom (and presumably other CLECs that also provide long distance services) would initially be required to use manual processing to determine compliance with the requirements of the option, which imposes substantial time and cost burdens for each individual order. The development of new mechanized processes and systems to support this effort would, at a minimum, require the expenditure of additional, significant resources and time. Moreover, to the extent any such mechanized processes could be developed, they could only be performed through the use of sampling processes, which themselves may generate disputes initiated by ILECs.

The third safe harbor option presents exactly the same types of problems for AT&T, WorldCom and similarly situated CLECs. This option requires a CLEC to certify (i) that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service, (ii) that at least 50 percent of the traffic on each of these local dialtone channels is local voice traffic, and (iii) that the entire loop facility has at least 33 percent local voice traffic (Clarification Order ¶ 22(3)). Although the Commission (id.) appears to believe that this option "may be the most efficient" for carriers using high capacity facilities, it is in fact no easier to implement than the second.

Given the significant barriers presented by the existing options, WorldCom's proposal obviates the need for a to make continuing inquiries of its customers or to expend substantial resources (and incur additional delays) to develop systems to track the

percentage of local usage on individual circuits. Even though carriers often cannot track the percentage of local usage on a specific circuit, they do maintain records that enable them to know if there is any special access traffic on a circuit. Therefore, WorldCom's proposal is based on existing capabilities that can be demonstrated relatively easily and would avoid penalizing CLECs by prohibiting them from obtaining UNEs in cases where they could not be used to "bypass special access." Accordingly, WorldCom's Petition demonstrates good cause, and the Commission should adopt its proposal for all carriers that can show that circuits purchased under a special access tariff do not carry any special access traffic.

II. The Commingling and Collocation Requirements Are Unnecessary To Achieve The Commission's "Anti-Bypass" Objectives Under The Terms Of WorldCom's Proposal

In addition to the above problems in implementing the safe harbor options, each option is also overlaid with (i) a prohibition against "commingling" UNEs and ILEC access services and (ii) a collocation requirement. However, even if such requirements made sense when a high capacity circuit is used to provide both local and special access functions, the are totally unnecessary if a CLEC can only convert special access circuits to UNEs when those circuits are exclusively used to provide local exchange service and associated switched access.

In the Clarification Order (¶ 28), the Commission stated that it was "not persuaded on this record that removing the prohibition [against commingling] would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services." But WorldCom's proposal would not authorize conversion of a loop facility if it is used to provide any special access traffic. Assuming, however, as

WorldCom shows (and AT&T agrees), that there are reasonable means of demonstrating that a circuit purchased under a special access tariff meets this stringent condition, the notion that a CLEC may be engaged in "special access bypass" is completely refuted.[13] There is no reason in such cases to await the development of a further factual record (see id.), because, by definition, a CLEC would not qualify if it made any attempt to engage in special access bypass over the affected facilities.[14]

WorldCom (at 14-15) is also correct that a rebuttable presumption of local usage should be permitted when a facility is routed to a Class 5 local switch that is not used as an IXC POP. Assuming that CLECs have appropriate facilities records to demonstrate that a circuit actually terminates on such a Class 5 switch and carries no special access traffic, there is ample basis to test the validity of their claims.[15] Moreover, there is no reason to believe that circuits routed to a Class 5 switch that does not serve as an IXC

---

[13] This is especially true because a CLEC's eligibility for the waiver is conditioned upon its obligation to continue to pay the full access service price for the remaining access multiplexing and/or access transport services over which the UNE traffic travels.

[14] In this regard, it is also critical to note that a prohibition against commingling effectively precludes a CLEC from converting any special access/local circuits to UNEs, either under the safe harbor options described in the Clarification Order or the narrow proposal made here. Requiring CLECs to maintain completely separate networks for local and access services places them at a severe economic disadvantage compared to ILECs (who carry all their traffic over a common network) and makes conversions cost prohibitive.

[15] Such a rebuttable presumption would not "regulate the type of equipment that a carrier must use" (Clarification Order ¶ 25), it would simply give CLECs a convenient basis upon which to make a certification that would have to be supported by appropriate data. WorldCom (n.7) states that it will use information from three sources to provide supporting data: ILEC billing records, customer billing records and provisioning systems. WorldCom notes that in most cases the customer bill should be sufficient. AT&T agrees that these and similar records should be satisfactory.

POP would be used to bypass special access, because, by definition, no switches are employed in the provision of special access services.

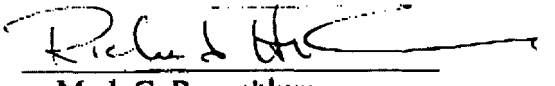
For the same reasons, there is also no reason to impose a collocation requirement where a circuit carries no special access traffic and is delivered to a Class 5 switch that is not an IXC POP. In these cases as well there is no basis to be concerned that there is any special access "bypass" involved. Moreover, this would not create a large loophole. WorldCom (at 16) states that its standalone loops or channel terminations would always be use a collocation and that no modification of the collocation requirement would be necessary in such cases.

Conclusion

WorldCom's proposal should be granted and apply to all similarly situated carriers.

Respectfully submitted,

AT&T CORP.

By 

Mark C. Rosenblum
Roy E. Hoffinger
Richard H. Rubin
AT&T CORP.
295 North Maple Avenue
Room 1127M1
Basking Ridge, New Jersey 07920
(908) 221-4481

Attorneys for AT&T Corp.

October 2, 2000